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Follow-up to the recommendations of the Permanent Forum

Follow-up to the recommendations of the Permanent Forum on economic and social development, indigenous women and the Second International Decade of the World's Indigenous People

Preamble

1. The principles of respect for and protection of the rights of indigenous peoples to free, prior and informed consent are set out in article 32 of the United Nations Declaration on the Rights of Indigenous Peoples (see General Assembly resolution 61/295). The free, prior and informed consent of indigenous peoples must be obtained before investments are made on projects affecting their lands, territories and resources and before such projects are brought into indigenous territories.

2. The Permanent Forum notes the recommendations contained in the Anchorage Declaration of 24 April 2009 and those made to the United Nations Climate Change Conference and to the Food and Agriculture Organization of the United Nations. The Forum also notes in particular the objections raised by indigenous peoples of the Arctic to the proposal contained in the Declaration to adopt a moratorium on oil and gas exploitation.

3. The Permanent Forum expresses its grave concern over the significant increase in the infrastructure budget of the World Bank from 15 per cent to 45 per cent in 2009 for the primary economies of developing States. The implications of this development in relation to the respect and protection of indigenous peoples' rights have to be clearly understood, and the imperative of getting the free, prior and informed consent of indigenous peoples affected by infrastructure projects has to be guaranteed. The Forum also notes that the World Bank has been given no additional operational budget to manage this large increase in infrastructure spending.

4. The Permanent Forum welcomes such initiatives as the indigenous and local community, business and biodiversity consultation, held at United Nations Headquarters in New York on 12 and 13 May 2009, as a useful dialogue between the

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private sector and indigenous peoples, and encourages further discussions with a view to ensuring the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples while stimulating community-level businesses based on the sustainable use of biodiversity through such creative partnerships.

5. It was noted that although corporations, owing to the pressures on and struggles of indigenous peoples, were now more willing to consult with communities, efforts fell far short of true free, prior and informed consent. There was a major problem with the lack of full disclosure of information regarding environmental, social, cultural and human rights impacts. One frequently encountered problem was that corporations, sometimes in collusion with Government authorities, selected indigenous individuals or specific communities with which to negotiate without ensuring that they represented their communities and/or the affected area. By doing so they divided indigenous peoples within the communities. There was a frustrating practice among some extractive industries to treat benefit-sharing or social programmes as charity rather than as a human rights issue.

Economic and social development

6. During all its sessions, the Permanent Forum has issued recommendations on economic and social development. Between the second and seventh sessions, the Forum issued approximately 150 recommendations on economic and social development, including those issued under agenda items on questions other than economic and social development.

7. The Permanent Forum has paid particular attention to the participation and representation of indigenous peoples in development processes, such as those related to the Millennium Development Goals, data collection and disaggregation, and urban indigenous peoples and migration. The Forum has recommended on numerous occasions that United Nations agencies, international financial institutions and other development actors change their paradigms and approaches to their work with indigenous peoples, including increased mainstreaming of indigenous peoples' issues in their work, respect for the principle of free, prior and informed consent, recognition of collective rights and increased participation of indigenous peoples in programme design, implementation and monitoring.

8. The Permanent Forum supports the conceptual and policy framework proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. This framework rests on three pillars: first, the duty of the State to protect against human rights abuses by third parties, including transnational corporations and other bu iness enterprises, through appropriate policies, regulation and adjudication; second, the corporate responsibility to respect human rights, which means acting with due diligence on all matters to avoid infringing on the rights of others; and third, greater access for victims to effective remedies, both judicial and non-judicial.

9. The Permanent Forum supports the work of the Special Representative to urge States to drive the human rights agenda into those areas that most affect business practices, including corporate law, export credit and insurance, investments and trade agreements. The Forum suggests the Special Representative to urge States to ensure that such business practices comply with the relevant provisions of the Declaration. The Forum urges the Special Representative to incorporate the specific

views and distinct perspectives of indigenous peoples on social and economic development. Regarding the Americas, corporations must also comply with the rulings of the Inter-American Court of Human Rights, which construe the States' obligations under the International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries with regard to the Declaration as extending even to States that have not ratified the Convention.

10. The Permanent Forum recommends that transnational corporations and other business enterprises adopt standards of human rights due diligence to protect, raise awareness of and prevent adverse human rights impacts on indigenous peoples. This process has four core elements: the existence of a human rights policy; assessment of the impact on human rights of company activities; integration of those values and findings into corporate culture; and tracking of and reporting on performance.

11. The Permanent Forum recommends that in the case of projects affecting indigenous peoples, States ensure that transnational corporations and other business enterprises comply with specific standards contained in the Declaration and ILO Convention No. 169.

12. The Permanent Forum recommends that, in order to ensure access to effective remedies, States enforce corporate compliance with relevant laws and standards. Transnational corporations and other business enterprises should put into place operational-level grievance mechanisms to provide early warning and help resolve problems before they escalate. Significant barriers to accessing effective judicial and non-judicial remedies persist, and the Forum supports the work of the Special Representative in identifying and proposing ways of eliminating those barriers.

13. The Permanent Forum supports the recommendations of the international expert group meeting on extractive industries, indigenous peoples' rights and corporate responsibility addressed to extractive industry corporations, States, United Nations agencies, funds and programmes, indigenous peoples, nations and organizations, and international financial institutions, contained in a paper presented to the Forum.

14. The Permanent Forum decides to appoint as Special Rapporteur Vicki Tauli-Corpus, a member of the Forum, to conduct a study on the impacts of the global economic crisis on indigenous peoples, to identify measures and proposals for Governments and United Nations bodies, agencies, funds and programmes to address the impacts and to report thereon to the Forum at its ninth session, in 2010.

15. The Permanent Forum decides to organize an international expert group meeting, without financial implications, on indigenous peoples' development with culture and identity, which would link the issues of the global economic crisis and the climate change crisis to indigenous peoples.

16. The Permanent Forum calls upon States and corporations to fully recognize the presence and participation of indigenous peoples in all negotiation processes relating to the entry of extractive industries, infrastructure projects and other development projects into their communities.

17. The Permanent Forum calls upon those Governments which have granted leases, concessions and licences on indigenous peoples' territories for projects related to logging, mineral, oil and water without proper consultation and without

respecting the free, prior and informed consent of the indigenous peoples concerned to review those arrangements and to address the complaints raised by indigenous peoples in those territories.

18. The Permanent Forum recommends that patent offices worldwide establish a mechanism whereby, when a patent is requested for a new product or procedure derived from indigenous peoples' resources or traditional knowledge, the origin of this knowledge is made public or otherwise disclosed and that the necessary consultations and negotiations take place with the indigenous peoples concerned.

19. The Permanent Forum commends the inclusion of the European Bank for Reconstruction and Development of free, prior and informed consent in its policy on indigenous peoples, and strongly urges other multilateral and bilateral financial institutions to follow this example. In particular, the Forum calls upon the Asian Development Bank to ensure that free, prior and informed consent and the provisions of the Declaration are integrated into its revised policy on indigenous peoples. It also calls upon the World Bank and the International Finance Corporation to review their policies and adopt free, prior and informed consent as the central principle in their dealings with indigenous peoples instead of the present free, prior, informed consultation. The international financial institutions should develop a strategy to raise staff awareness at the national and headquarters levels on indigenous peoples' rights and development perspectives and thereby improve their relationships with indigenous peoples at the country level.

20. The Permanent Forum recommends that corporations, regulating bodies and certification bodies incorporate the rights of indigenous peoples in their quality standards, operating plans, business plans and investment plans. An international standard providing guidelines for social responsibility (ISO 2600), which is currently in the drafting stage with publication expected at the end of 2010, should be certifiable and serve as a framework for corporations to show their respect and good faith towards indigenous peoples.

21. The Permanent Forum endorses the recommendations submitted on 8 May 2009 to the fourth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants by the Indigenous Peoples' Caucus to increase and ensure the formal participation of indigenous peoples in that process.

22. The Permanent Forum recommends that the Inter-agency Support Group on Indigenous Issues convene an international technical expert seminar on indicators on the well-being of indigenous peoples to discuss indicators that could be used in monitoring the situation of indigenous peoples and the implementation of the Declaration.

23. The Permanent Forum endorses the recommendations of the International Technical Workshop on Indicators Relevant for Indigenous Peoples (see E/C.19/2009/6).

24. The Permanent Forum decides to extend the mandate of the Special Rapporteurs on indigenous peoples and corporations, Carlos Mamani Condori, Elisa Canqui Mollo and Pavel Sulyandziga, for one year, and requests them to submit a written report to the Forum at its ninth session.

Indigenous women

25. The Permanent Forum recommends that the United Nations Population Fund convene an international expert workshop on the theme "Indigenous peoples and health, with special emphasis on sexual and reproductive health", and that it submit a report thereon to the Forum at its ninth session.

26. The Permanent Forum invites the Special Rapporteur on the human rights of migrants to prepare a study on the situation of indigenous women migrants.

27. The Permanent Forum urges States, with the effective participation of indigenous peoples, to address the concomitant loss of community citizenship and human rights when indigenous peoples are forced to migrate or are displaced by violent conflicts, with a particular emphasis on indigenous women.

Second International Decade of the World's Indigenous People

28. The Permanent Forum recommends that Member States, United Nations agencies and indigenous peoples' organizations engage actively in the midterm evaluation of the Second International Decade of the World's Indigenous People and submit reports evaluating the implementation of the Decade at the national level.

29. The Permanent Forum recommends that States support the trust fund on indigenous issues as an important contribution to the implementation of the goal and objectives of the Decade.

30. The Permanent Forum recommends that the General Assembly rename the Decade "Second International Decade of World's Indigenous Peoples".

31. The Permanent Forum recommends that States and United Nations agencies apply the rights affirmed in the Declaration throughout their operational frameworks for implementing the Programme of Action for the Decade, in particular its objective on free, prior and informed consent by indigenous peoples.

32. The Permanent Forum commends Australia for changing its position by endorsing the Declaration, and calls upon the three remaining States that are opposed to it (Canada, New Zealand and the United States of America), as well as those abstaining, to reverse their positions and to endorse the Declaration so as to achieve full consensus.

33. The Permanent Forum calls upon the Department of Economic and Social Affairs to publish a comprehensive report on the state of indigenous peoples, similar to the Human Development Report, to mark the Decade.